

GAHC010230352022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5306/2022

DIPENDRA NEWAR AND 3 ORS
REP. BY HIS NATURAL GUARDIAN (FATHER) BIR BAHADUR NEWAR
VILL.- LALUNG GAON
KATAKIPARA
P.O.- SAWKUCHI
P.S.- GARCHUK
PIN- 781040
DIST.- KAMRUP (METRO)
ASSAM.

2: PARTHA BISHNU RABHA
REP. BY HIS NATURAL GUARDIAN (FATHER) BIPLAB RABHA
VILL- LALMATI CHAMGURI
PIN- 781029
P.O. AND P.S.- BASISTHA
DIST.- KAMRUP (METRO)
ASSAM.

3: ASMA KHATUN
REP. BY HER NATURAL GUARDIAN (FATHER) KAMRUT ZAMAL
VILL.- TURUKPARA
P.O. AND P.S.- BOKO
PIN- 781123
DIST.- KAMRUP (RURAL)
ASSAM.

4: SARIFUL AZAM
REP. BY HIS NATURAL GUARDIAN (FATHER) MONTAZ ALI
PERMANENT RESIDENT OF-
VILL.- BELTARI
P.O.- RANIGANJ
P.S.- SAPATGRAM
DIST.- DHUBRI
ASSAM

PIN- 783345.
PRESENTLY RESIDING AT-
VILL.- TURUKPARA
P.O. AND P.S.- BOKO
PIN- 781123
DIST.- KAMRUP (RURAL)
ASSAM.

VERSUS

THE UNION OF INDIA AND 3 ORS
THROUGH THE SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF EDUCATION
NEW DELHI
PIN- 110001.

2:NAVODAYA VIDYALAYA SAMITI
REP. BY THE COMMISSIONER
124C
SHASTRI BHABAN
NEW DELHI
PIN- 110001.

3:THE DEPUTY COMMISSIONER
REGIONAL OFFICE
NAVODAYA VIDYALAYA SAMITY
BARIK POINT
TEMPLE ROAD
LOWER LACHUMIERE
SHILLONG
PIN- 793001.

4:THE PRINCIPAL
JAWAHAR NAVODAYA VIDYALAYA
KAMRUP
RANGIA
P.O.- JAMTOLA
DIST.- KAMRUP (RURAL)
ASSAM
PIN- 781365.

Advocate for : MR. M H ANSARI

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 3 ORS

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

Dates of Hearing : **09.01.2023**

Date of Judgment : **30.03.2023**

JUDGMENT & ORDER

Heard Mr. Mr. M. H. Ansari, learned counsel for the petitioners and Mr. G. Pegu, learned Central Government Counsel for the respondent No. 1. Also heard Ms. R. S. Choudhury, learned Standing Counsel, Navodaya Vidyalaya Samiti and Jawahar Navodaya Vidyalaya for the respondent Nos. 2 to 4.

2) Petitioners herein are minors and are represented by their natural guardians. Petitioner Nos. 1 and 2 are from Kamrup (Metro) District, petitioner No. 3 is from Kamrup District and petitioner No. 4 is from Dhubri District and claimed that for his studies he is residing with his maternal uncle at Boko of Kamrup District, where he has completed Class – III and IV, and studying in Class-V.

3) Petitioners contentions are that inspite of their selection in the Jawahar Navodaya Vidyalaya Selection Test-2022 (JNVST) for Admission to Class-VI at Jawahar Navodaya Vidyalaya, Rangia, Kamrup District the Principal of the said School is not allowing them to take admission in Class-VI in that Vidyalaya. Hence this writ petition

4) By order dated 17.08.2022, the Court passed an interim order in the matter directing the respondent authorities of Jawahar Navodaya Vidyalaya, Rangia, Kamrup District not to fill up four seat, three for Unreserved and one for Schedule Tribe in Class-VI in that Vidyalaya, which is still in force.

5) Ms. R. S. Choudhury, learned Standing Counsel for the respondents Navodaya Vidyalaya Samiti (NVS) and Jawahar Navodaya Vidyalayas (JNVs) stated that for the purpose of selection test for admission to Class-VI in Jawahar Navodaya Vidyalayas (JNVs) of the Country for the Session 2022-2023, the Navodaya Vidyalaya Samiti (NVS) issued the "Prospectus for Jawahar Navodaya Vidyalaya Selection Test-2022 (JNVST) for Admission to Class-VI". Selection Test for admission to Class-VI for the Session 2022-2023 in all the Jawahar Navodaya Vidyalayas of the

Country that are under the management of the NVS was conducted by the CBSE on 30.04.2022 and that the result of the said selection test was published on 06.07.2022.

6) Ms. Choudhury placing the provisions of Clause 2.1(i) under the heading "HOW TO APPLY FOR JNV SELECTION TEST - Procedure to register online for JNV Selection Test 2022" and Clause 3.1 under the heading "*Selection and Admission*" of the "Prospectus for JNVST-2022 for Admission to Class-VI" stated that though petitioners participated in the said JNVST-2022 for their admission to Class-VI at JNV, Rangia, Kamrup District and got selected in the said selection test, but their said selection is provisional till they are finally admitted in Class-VI in that Vidyalaya, which is only after due verification of required certificates and documents as prescribed by the NVS. In the said Prospectus Clause 2.1(i) under the heading "How to apply for JNV Selection Test – Procedure to register online for JNV Selection Test 2022" it is provided that – *Verification of proofs for residence, age, eligibility, will be done for selected candidates through the laid down procedure after the declaration of results.* Further, Clause-3.1 under the heading "*Selection and Admission*" in the same Prospectus it is stipulated that – *Selection in the test will not vest any right on the candidate to secure admission into the JNV. At the time of seeking actual admission, each selected candidate will have to produce all relevant certificates, as prescribed by the NVS. Until admission, the selection is provisional only. Candidates are advised to apply for TC from parent school only after the verification of documents and confirmation of admission by the respective JNV.*

7) As such, it is an admitted fact that selection in the JNVST-2022 will not vest any right on the candidate to secure admission into the JNVs and each selected candidate at the time of seeking actual admission will have to produce all the relevant certificates that are prescribed by the Navodaya Vidyalaya Samiti, and that until admission of the candidate in the JNV concerned his/her such selection is only provisional. For that purpose the NVS advised the all the selected candidates to apply for Transfer Certificate from their parent school only after verification of their documents and confirmation of their admission by the respective Jawahar Navodaya Vidyalaya.

8) Ms. Choudhury also clarified that in the said Prospectus under the heading "WHO IS ELIGIBLE - FOR ALL CANDIDATES" at Clauses 4.1 and 4.2 followings were stipulated:

4.1 Only the candidates from the district concerned where the Jawahar Navodaya Vidyalaya has been opened are eligible to apply for admission. However, if the District where the JNV is opened is bifurcated at a later date, the old boundaries of

the district are considered for the purpose of eligibility for admission into JNVST, in case a new Vidyalaya is not started in the newly bifurcated district as yet.

4.3 A candidate appearing for his selection test must be studying in Class-V for the whole of the academic session 2021-22 in a Government/Government aided or other recognised schools or 'B' certificate competency course of National Institute of Open Schooling in the same district where he/she is seeking admission. The candidate who has already passed/studied class-V in all previous academic sessions is not eligible to appear in the selection test. A school will be deemed recognised if it is declared so by the Government or by any other agency authorised on behalf of Government. Schools where students have obtained 'B' certificate under National Institute of Open Schooling should have accreditation of NIOS. A candidate must successfully complete Class-V in the session 2021-22. Actual admission in Class-VI for the session 2022-23 will be subject to the mentioned condition.

9) Ms. Choudhury submitted that after their selection on verification of the documents submitted by the petitioner Nos. 1 and 2, it was found that both of them passed Class-V in the year 2021 itself and therefore, as provided in said Clause 4.3 of the said Prospectus, both the petitioner Nos. 1 and 2 are not entitled for admission in the concerned JNV. In that regard Ms. Choudhury has placed the copy of the Application Forms of both the petitioners to establish that they passed Class-V from B S Academy Group of Institutions and Shankardev Shishu Bidya Niketan, respectively, which have been accepted by the petitioner Nos. 1 and 2.

10) With regard to petitioner No.3 Ms. Choudhury submitted that after her selection, initially her admission in Class-VI at JNV, Rangia, Kamrup District was declined as she placed duplicate birth certificate and there was overwriting in her vaccination card. However, as the discrepancies with her duplicate birth certificate and other documents were clarified later, she has already been admitted in Class-VI, Section-A at JNV, Rangia, Kamrup District vide Admission No. 3080 for the Session 2022-2023.

11) Ms. Choudhury placed Clause 4.1 of the said "Prospectus for JNVST-2022 for Admission to Class-VI", wherein it is provided that – *Only the candidates from the district concerned where the Jawahar Navodaya Vidyalaya has been opened are eligible to apply for admission. However, if the District where the JNV is opened is bifurcated at a later date, the old boundaries of the district are considered for the purpose of eligibility for admission into JNVST, in case a new*

Vidyalaya is not started in the newly bifurcated district as yet. Ms. Choudhury stated that the petitioner No.4 himself admitted in the petition that he is from Dhubri District and his parents are still living in the district of Dhubri and that the said petitioner is living with his maternal uncle at Boko in Kamrup district for his studies, from where he has completed Class – III and IV and is studying in Class-V. Relying on said Clause 4.1 Ms. Choudhury stated that petitioner No. 4 being a resident of Dhubri District, where there is Navodaya Vidyalaya since long, is not entailed for admission in said JNV at Rangia, Kamrup District, being from a different district. Ms. Choudhury also stated that the petitioner No. 4 failed to place before the authority as to whether the school in which he studied from Class-III onwards is a recognised school by the Government concerned or by any other agency authorised on behalf of Government or not as required under Clause 4.3 of the Prospectus, noted above.

12) Petitioners stated that they studied in the primary schools of Karbi Anglong district and got selected for admission to Class-VI for the Session 2022-2023 in the JNV at Baithalongso, West Karbi Anglong after a process of selection test, but the authorities of said JNV, Baithalongso, West Karbi Anglong is not allowing them to take admission in the said Vidyalaya in terms of the said letter dated 14.03.2022 of the NVS stating that petitioners are from outside the district of West Karbi Anglong, committed illegality.

13) Being aggrieved, the petitioners have preferred this writ petition praying amongst others to set aside and quash and/or not to give effect to the said letter No. F.No.1-46/2022-NVS(Exam)/3277 dated 14.03.2022 issued by the NVS and to direct the authorities of the said JNV, Baithalongso, West Karbi Anglong District and its Principal respondent No. 5 to allow them to take admission in Class-VI on being selected for admission in said JNV, Baithalongso in terms of Clause 4.1 of the "Prospectus for JNVST-2022 for Admission to Class-VI".

14) The Court on 30.07.2022 passed an interim order directing the concerned Navodaya Vidyalaya Samiti not to fill up eight seats in Class-VI, which is still in force.

15) By filing an additional affidavit the petitioners stated that though their parents have placed (i) certificates regarding proof of their residence in the Karbi Anglong Autonomous Council issued by the Sarkari Gaon Burhas issued in the month of July-August, 2022, (ii) Land Allotment Certificates, (iii) Bank Passbooks of Langpi Dehangi Rural Bank, Kheroni Branch, Karbi Anglong, (iv) Driving Licenses issued by the DTO, Karbi Anglong, (v) House Rent Agreements, (vi) Trade Licenses issued by the Secretary, Taxation, Karbi Anglong Autonomous Council and (vii) copy of

the Electricity Bills etc, to establish that they are resident of Karbi Anglong district; however, inspite of submission of all those documents, the respondents in the JNVs did not allow them to take admission in Class-VI for the Session 2022-2023.

16) Relying on the provisions of Clause 4.1 of said "Prospectus for JNVST-2022 for Admission to Class-VI", petitioners submitted that on being selected in the JNVST 2022 to Class-VI for the JNV, Baithalongso, West Karbi Anglong District they are entitled for admission in that Vidyalaya at Class-VI in the session 2022-2023. They stated that in the said Prospectus under the Heading "WHO IS ELIGIBLE For ALL CANDIDATES:" at Clause 4.1. it is provided that – *Only the candidates from the district concerned where the Jawahar Navodaya Vidyalaya has been opened are eligible to apply for admission. However, if the District where the JNV is opened is bifurcated at a later date, the old boundaries of the district are considered for the purpose of eligibility for admission into JNVST, in case a new Vidyalaya is not started in the newly bifurcated district as yet.*

17) Ms. Choudhury, learned counsel for the respondents NVS and JNVs has placed before the Court that the said JNV Scheme regarding admission in the JNVs for the Session 2022 that was applicable for all the JNVs established in different States and Union Territories of the Country including the JNVs of Assam as well as JNV, Baithalongso of West Karbi Anglong district, as provided in the Clause 4.1 of the Prospectus for JNVSLT-2022 regarding admission in the JNVs for the Session 2022, also involved in the present case, was under challenge before the Hon'ble Bombay High Court in Writ Petition No. 9310/2022 (*Ku. Shubham Vijay Patil and 24 Others -Vs- The Navodaya Vidyalaya Samiti and 2 Others*) and that the said provision was upheld by a Division Bench of the Hon'ble Bombay High Court vide Judgment dated 13.10.2022. It is also stated by Ms. Choudhury that appeal against the said Judgment dated 13.10.2022 of the Division Bench of the Hon'ble Bombay High Court passed in Writ Petition No. 9310/2022 was preferred before the Hon'ble Supreme Court being Special Leave to Appeal (C) No. 19285/2022 by aggrieved candidates (*Shubham Vijay Patil and Others -Vs- The Navodaya Vidyalaya Samiti and Others*) and that the Hon'ble Apex Court by order dated 04.11.2022 dismissed the said appeal and thereby upheld the said JNV Scheme regarding admission in the JNVs for the Session 2022.

18) Submissions made by the learned counsels for the parties and the decisions cited by them have been duly considered.

19) It is seen that for the purpose of selection test for admission to Class-VI in JNVs of the Country for the Session 2022-2023, the NVS have issued the "Prospectus for JNVST-2022 for

Admission to Class-VI” stipulating the provisions regarding the eligibility criteria for appearing in the selection test as well as pertaining to admission to Class-VI in JNVs for the Session 2022-2023 which were uploaded in the official website of NVS for necessary and wide publication to admission in all JNVs. Said selection test was conducted by CBSE throughout the Country on 30th April, 2022 in one phase for all the JNVs and the result of the said selection test was declared on 06.07.2022.

20) As the process of selection for admission to Class-VI was done by the CBSE, therefore, JNV has no role in the admission test and selection, but after declaration of the results of such admission test conducted by the CBSE, the Principal of the concerned JNV is responsible to verify the relevant documents for admission of selected students as per the norms, procedure and provisions prescribed by the NVS as stipulated in the concerned Prospectus.

21) The Navodaya Vidyalaya Samiti (NVS) is an autonomous organization of Ministry of Education in the Department of School Education and Literacy, Government of India, having its present Headquarters at Noida, Uttar Pradesh, registered under the Societies Registration Act, 1860. It is stated that NVS runs, manages and controls the functioning of Jawahar Navodaya Vidyalayas (JNVs) all over India through its eight Regional Offices.

22) The JNVs are fully residential co-educational Schools set with objective of providing modern quality education to talented children, predominantly from rural areas, where the students, teachers and staff live in the same campus. Most of the JNVs are set up in rural areas, far away from the district headquarters. The Teachers and the staff of JNVs are expected to exhibit exemplary moral character before the students and strict disciplinary measures are being followed to ensure high moral standard among the teachers and staff.

23) The Scheme of the JNVs are - (i) to provide good quality modern education including a strong component of culture, inculcation of values, awareness of the environment, adventure activities and physical education to the talented children predominantly from rural area; (ii) to ensure that students attain a reasonable level of competency in three languages; (iii) to promote national integration through migration of students from Hindi to Non-Hindi speaking State and vice-versa and (iv) to serve in each District as focal point for improvement in quality of School Education in general through sharing of experiences and facilities.

24) Admissions in JNVs are made through the JNV Selection Test to Class-VI and its medium

of instruction is the mother tongue or regional language upto Class-VIII and thereafter, English for Mathematics and Science and Hindi for Social Science and the students of the JNVs appear for Board Examinations of the Central Board of Secondary Education. Education in the JNVs is free including boarding and lodging, Uniform and Text Books where a sum of Rs.600/- per month is collected only from the students of class-IX to XII towards Vidyalaya Vikash Nidhi. However the students belonging to the reserved categories of SC/ST, all the girls students and the students whose family income is below poverty line (BPL) are exempted from such collection of amount. Further, in respect of wards of Government employee other than exempted category of students of Classes VI to VIII, all SC/ST students, girls students and wards of BPL families, Vikas Nidhi is charged @ Rs.1,500/- per month or actual children education allowance received by the parent per month whichever is less. However, Vidyalaya Vikash Nidhi is not less than Rs.600/- per student per month.

25) In accordance with the National Policy of Education the Government of India have established JNVs in 27 States (including Assam) and 8 Union Territories of the Country which are co-educational residential schools fully financed and administered by Government of India. The Government of India has also established 28 JNVS (27+1) in Assam including at JNV, Baithalongso of West Karbi Anglong district as co-educational residential Schools.

26) It is well settled that procedure prescribed in the Prospectus casts an obligation on the applicants to apply in terms thereof and they cannot be heard to state later on that their cases should be accepted even if they did not adhere to the conditions prescribed therein, i.e. in the Prospectus concerned, since the applicants, knowing fully well participated in the selection process.

27) From the Judgment dated 13.10.2022 of the Division Bench of the Hon'ble Bombay High Court It passed in the said case of *Ku. Shubham Vijay Patil and 24 Others -Vs- The Navodaya Vidyalaya Samiti and 2 Others* (Writ Petition No. 9310/2022) it is seen that the Hon'ble Court deliberated with the provisions of Clause 4.1 of the said "Prospectus for Jawahar Navodaya Vidyalaya Selection Test-2022 for Admission to Class-VI" and after considering all the relevant factors have held as follows:

"9. Clause 4.1 starts with the term 'only'. It states that 'only the candidates from the district concerned where the JNVs are opened are eligible for admission'. The word 'only' implies that the students other than the District where

the JNV is situated are excluded. No other interpretation is possible. We cannot persuade ourselves to accede to the arguments of the Mr. Bhavake, the learned Advocate for the Petitioners that even though the student may not be resident of the same District where the JNV is situated and if he has passed 5th standard from the district where the JNV is situated is eligible to be admitted. Such an interpretation would be against the object and the tenor of the clauses of the prospectus. The aforesaid discussion leads us to conclude that the candidates seeking admission to the JNV must satisfy the twin test (i) he must be studying in Class V in Government/Government aided or other recommended schools or B Certificate Competency Course of NIOS in the same District where the JNV is situated and (ii) he must be resident of the same district where the JNV is situated and is seeking admission.

10. *In the light of the above, the Writ Petitions fail. The Writ Petitions, as such are dismissed. No costs”.*

28) Against the said Judgment of dismissal dated 13.10.2022 passed by the Division Bench of the Hon'ble Bombay High Court in Writ Petition No. 9310/2022, those writ petitioners as appellants preferred SLP(C) No. 19285/2022 (*Shubham Vijay Patil & Others -Vs- The Navodaya Vidyalaya Samiti & Others*) before the Hon'ble Supreme Court. After hearing the parties, the Hon'ble Supreme Court by Order dated 04.11.2022 dismissed the said SLP(C) No. 19285/2022, without interfering with the said order dated 13.10.2022 passed by the Division Bench of the Hon'ble Bombay High Court in Writ Petition No. 9310/2022, noted above.

29) It is an admitted fact that the petitioner No.4 is from Village-Beltari, P.O. - Ranigang, P.S. - Sapatgram, District - Dhubri District. From the judgment dated 13.10.2022 of the Division Bench of the Hon'ble Bombay High Court passed in Writ Petition No. 9310/2022 it is seen that the Hon'ble Court rejected the contention of the petitioners holding that – *We cannot persuade ourselves to accede to the arguments of Mr. Bhavake, the learned Advocate for the Petitioners that even though the student may not be resident of the same District where the JNV is situated and if he has passed 5th standard from the district where the JNV is situated is eligible to be admitted.* Hon'ble Supreme Court of India by Order dated 04.11.2022 dismissed the SLP(C) No. 19285/2022, preferred against the said Judgment dated 13.10.2022 passed by the Division Bench of the Hon'ble Bombay High Court in Writ Petition No. 9310/2022, without interfering with the said Judgment, noted above.

30) For the reasons above, this writ petition, being devoid of merit stands dismissed except the case of Petitioner No.3, Asma Khatun, daughter of Kamrut Zamal, considering the fact that the respondent authorities of Navodaya Vidyalaya Samiti and Jawahar Navodaya Vidyalaya have already allowed the said petitioner No.3 to take admission in Class-VI for the Session 2022-2023 at Jawahar Navodaya Vidyalaya, Rangia, District - Kamrup being satisfied with the relevant documents submitted on her behalf regarding her birth certificate, residence certificate etc., as noted above.

31) Interim order dated 17.08.2022, passed earlier in this petition, stands vacated.

JUDGE

Comparing Assistant